

## **LONDON COUNCILS**

### **RESPONSE TO BIS CONSULTATION ON STREET TRADING AND PEDLARY (NOVEMBER 2012)**

#### **General Note**

The licensing of street trading in all the London Boroughs, except for the Cities of Westminster and London, is governed by Part III of the London Local Authorities Act 1990 ("the 1990 Act").

This response is made on behalf of London Councils, who are the representative body of all the London Borough Councils.

It should be noted that some of the London Borough Councils may be making separate representations of their own.

In formulating the response, advice has been taken from leading and junior counsel, and as suggested by BIS, proposed amendments to the 1990 Act have been drafted by Parliamentary Agents.

#### **Note on amendments**

In the consultation paper, there is a suggestion that any amendments put forward by the Councils will simply be "slotted in" to the draft regulations. A number of London Councils' proposed amendments to the 1990 Act are based upon the draft regulations. If, as a result of the responses to the consultation, the Department decides to amend the draft regulations, it is important that the councils are given an opportunity to consider whether any changes to its amendments are required.

#### **Note on commencement**

As will be seen in the proposed amendments, there is provision enabling the councils to designate areas within which certain restrictions on pedlars will apply. The Councils will need time to follow the procedures for designation set out in the amendments. For that reason, the Councils would ask that commencement date of the regulations be set so that the Councils have that time. The councils have made some suggestions at the end of the proposed amendments.

## **Responses to Consultation Questions**

### **Repeal of the Pedlars Acts:**

**Question 1:** Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?

Answer: Yes, in the light of the fact that the councils have received advice that its own existing provisions relating to pedlars require amendment.

However, the Councils have concerns that the wholesale repeal of the Pedlars Acts, without any replacement registration provisions (at the very least) is undesirable. There will be instances where the Councils and the police, as an enforcement authorities, will wish to know the name of a person acting as a pedlar or purporting to do so, and there should be an equivalent of a pedlar's certificate to allow this to happen. Similarly, customers who buy from pedlars may wish to know who it is they are buying goods from. When buying from a shop or a fixed stall, the trader can be located easily, and that is less likely to be the case with a person acting as a pedlar.

The councils do not believe that the "good character" provisions in the Pedlars Act 1871 are necessary, and understands entirely that the residency qualification would be in breach of the Services Directive.

The Councils would wish to make it clear that they do not have any desire to become a registration authority for pedlars. Given the nature of pedlary, this should be established on a national basis.

The Councils wish also to take the opportunity of stating the view that pedlars and the issues that they raise are, in principle, no different from static street traders, and ideally the Councils would prefer that pedlars were subject to the same licensing controls.

#### **Question 1.1**

Answer: N/A (only applies to police forces)

#### **Question 1.2:**

Answer N/A (only applies to pedlars)

**Question 1.3:** Do you consider that repeal would have an impact on any other organisation, individual or group? If so, please provide details of that organisation etc and what you consider the impacts on them would be.

There would clearly be an impact on local authorities, who have to administer the street trading regime. This includes the Councils, because the 1990 Act refers specifically to the Pedlars Acts, in setting out the pedlars' exemption for house to house sales. The 1990 Act would have to be amended (as is proposed by the Councils should happen) and prepare for and train its officers about the replacement regime and enforce it on the ground.

The change would also have an impact on licensed street traders, as would any change to street trading legislation.

It would also have an impact on business improvement districts and organisers of large scale events (whether regular like football matches or occasional like festivals) of the sort that will attract pedlars.

**Question 2:** Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption from the “national” street trading regime in England and Wales? Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

This question is not of direct relevance to the Councils, because the national legislation does not apply. However, it will be seen from later responses, and the Councils’ proposed draft amendments, that the Councils do not entirely agree with the new definition of pedlar, for reasons which should be self-explanatory.

Counsel advised that the Councils’ “door to door only” exemption is incompatible with the Directive. However, the proposals set out in the councils’ proposed amendments are, in counsels’ view, compatible.

In summary, the Councils’ amendments would:

- require pedlars to arrive to the place where they are trading on foot and then trade only on foot;
- require trollies to be within certain dimensions
- enable the council to designate areas within which only house to house peddling would be allowed without a street trading licence. The grounds for designating are set out in the amendments;
- allow pedlars to trade without a licence outside a designated area if they follow rules about moving from place to place.

London Councils would like to place on record that some councils have concerns that the new proposed pedlar definition will be difficult to enforce and attempting to do so will take up significant resources and will result in a cat and mouse game with the pedlars.

There are also concerns about unfair competition with shops and licensed traders and in respect of underage pedlars. As already mentioned. some of the councils query whether there is any need to make special provision for pedlars at all, and that they should be regulated like other street traders.

#### **Amendments to Schedule 4 to the LG(MP)A**

**Question 3:** If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/ consent street in relation to established traders but not in relation to temporary traders? (paragraphs 1.25 – 1.27)

This question is of no application in London because the 1990 Act works the opposite way to the 1982 Act. Under the 1990 Act, street trading is prohibited in any area which is not a licence street. Under the 1982 Act, street trading is allowed unless the street is designated.

**Question 4:** Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)

Yes – see proposed amendments.

**Question 5:** Do you agree with the proposal to replace the mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained. (Paragraph 1.32).

Yes, the Councils agree – see proposed amendments.

**Question 5.1:** If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?

No, the Councils do not have data on which it can make a reasonable estimation.

**Question 6:** Would it be helpful for BIS to issue guidance on the circumstances in which the discretionary grounds in 3(6) (a), (d), (e) and (f) can be used? (see paragraphs 1.33 and 1.34 above).

The 1990 Act contains similar provisions to those mentioned above. They are:

- section 25 (4)(b) – the equivalent of paragraph 3(6)(a) (insufficient space). In the 1990 Act, this is a mandatory ground for refusal;
- section 25(6)(b) – the equivalent of paragraph 3(6)(d) (applicant's unsuitability);
- section 25(6)(d) – the equivalent of paragraph 3(6)(f) (failure to pay charges).

The Councils have not struggled with these provisions but if BIS believes it necessary to issue guidance tailored to the provisions of the 1990 Act, the City Councils would wish to be consulted on it.

**Question 7:** Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground (that there are already enough street traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade) could be used compatibly with the Directive and, if so, please give reasons. (see paragraphs 1.36 -1.37).

The Councils have been advised by counsel that the equivalent in the 1990 Act (section 25(6)(a)) as it stands is incompatible with the Directive. However, counsel also advised that the provision could remain in the legislation if it were amended to ensure that when the councils were exercising their powers of refusal, they must consider whether there are overriding reasons of public interest in support of the decision. This approach is reflected in the proposed amendments.

One of the reasons why the councils are keen to preserve the ability to use the ground in section 25(6)(a) is to preserve the vitality of markets, many of which in London are regulated using the provisions of the 1990 Act. Without the ability to have some control over what traders could sell, markets and areas where there are higher numbers of street traders might become homogenous.

**Question 7.1:** Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)? (see paragraph 1.38) (the ground being that the street is unsuitable for the trading in which the applicant desires to trade).

The councils believes that this would provide a useful addition (rather than a replacement).

**Question 7.2:** In relation to this new ground, can you tell us:

*(i) In what circumstances you would use this ground and how often?*

The way that the Councils operate the regime under the 1990 Act is to designate small areas, each the size of a street trading pitch, as designated streets. Applications for licences are made in respect of each individual pitch. So the Councils regulate where street trading pitches are to go by designation, not by the granting of licences.

Nonetheless, there may be good reason to refuse a licence in a particular place on the grounds of what is intended to be sold, because of the nature of the street. For example, if the street were narrow or if it were busy, it might be unacceptable for there to be a hot food trader, because of safety concerns. Also there may be areas where there is a history of illegal street trading, where the provision may be useful.

*(ii) Whether this ground would produce costs on you as a local authority, or on you as a business and what these costs are likely to be?*

It is unlikely that this ground would result in additional significant costs.

**Question 7.3:** Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

The Councils would not anticipate struggling with this new ground but would wish to be consulted on the formulation of any guidance.

**Question 8:** Do you think there are any circumstances in which either of the grounds in paragraph 3(6)(c) or (g) could be used compatibly with the Directive in relation to temporary traders? (see paragraphs 1.39 -1.42) (The grounds are the applicant wants to trade for too few days each week and the applicant has failed to use previous licence sufficiently).

The “making full use” ground is found in section 25(6)(c) of the 1990 Act – there is no equivalent to the “too few days” ground.

The Councils do not think that there would be any circumstances in which the ground could be used compatibly in relation to temporary traders. It is also unlikely, however, that a temporary trader (ie a trader based in an EC country) would have been in the position of holding a street trading licence in London and not make full use of it, because it would be likely to be economically unviable to do so.

**Question 8:1:** Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?

It would be preferable to pursue the approach of expressly preventing the grounds from being used in relation to temporary traders.

**Question 8.2:** Will local authorities continue to use these grounds in relation to established traders?

Yes.

**Question 8.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds could be used in relation to established traders?

The only potential difficulty that the Councils have is if the 1990 Act is amended (as proposed by the Councils) to allow corporate bodies to apply for street trading licences. Corporate bodies who are temporary traders are more likely to apply for a street trading licence than individuals who are temporary traders, because they can employ UK residents to man a stall, whereas an individual temporary trader would have to continually enter and leave the UK to maintain his temporary status. A corporate body might find it economically acceptable not to avail itself fully of a street trading licence. For example, it could decide only to trade on certain busy days.

This illustrates, in the Councils' view, an inherent unfairness in the Directive. BIS is right to say that the Councils might feel that it would be difficult to treat permanent and temporary traders differently in this way, but this is an inherent defect in the Directive which allows for (and in fact actively promotes) such discrimination to take place.

One council have concerns that this will limit decision making in refusing applications and lead to more complaints etc.

**Question 9:** Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A? (see paragraph 1.43). Paragraph 3(8) in the 1982 Act deals with cases where a person was trading in a fixed position without a licence lawfully (because he didn't need one) in a street which then becomes a licence street, requiring him to have a licence.

N/A: There is no equivalent provision to paragraph 3(8) in the 1990 Act.

**Question 9.1:** Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?

N/A: There is no equivalent provision to paragraph 3(8) in the 1990 Act.

**Question 10:** Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely? (see paragraphs 1.44 – 1.47)

Counsel has advised that the equivalent provision in the 1990 Act (section 27(1)(a)) as it stands is incompatible and an amendment has therefore been drafted that is equivalent to the proposal in the BIS draft.

However, for the record, some councils have mentioned that the proposal will present potential problems. For example, there would be no framework set out to establish the length of time given to a new applicant. How would a council differentiate the duration between one applicant and

another? There is also a fear that giving out longer licences will encourage sub-letting of the licence which is currently an issue for most boroughs. The renewal process will no longer take place once a year but at different times of the year depending on the length of the licence. There may also be implications with licensed traders who fall into arrears with the fees and charges. At present they know that they have to clear there arrears before renewal at the end of the year. If councils give out longer licences it will encourage people to fall into arrears and not take the necessary responsibility to ensure they keep up with their payments. There is also the suggestion from some councils that it could lead to corruption and abuse without any guidance as to the circumstances under which longer licences may be granted.

One council is currently consulting on reducing licence duration from three years to one.

If you are a local authority can you further tell us

*Question 10.1:* Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?

Some councils who have expressed a view are neutral and others take the view that there will be a negative impact for the reasons mentioned above.

*Question 10.2:* (i) Whether you are likely to issue licences for more than a 12 month period or indefinitely?

The consensus is that this would be unlikely.

(ii) If you are likely to issue licences for a defined period which is longer than 12 months, what period you are likely to choose?

N/A

**Question 11:** Would it be helpful for BIS to issue guidance as to how the PSR may affect a local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)( a) to ( c) in relation to established traders/temporary traders? (see paragraphs 1.48 – 1.50) The grounds in 5(1)(a) to see relate to (a) there not being enough space in the street, (b) suitability of licence holder and (c) non-payment of fees.

Yes, and the Councils would wish to be consulted.

**Question 11.1:** Do you think there are circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders? The 5(1)(d) revocation ground is failure to avail of the licence to a reasonable extent.

**Question 11.2:** Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely? Will local authorities continue to use that ground in relation to established traders?

The equivalent ground can be found in sections 28(1)(c) of the 1990 Act. The Councils' response is the same as for question 8: The Councils do not think that there would be any circumstances in which the ground could be used compatibly in relation to temporary traders. It is also unlikely, however, that a temporary trader would have been in the position of holding a street trading licence in London and not make full use of it, because it would be likely to be economically unviable to do so.

**Question 11.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?

The Councils' answer is the same as for question 8.3:

The only potential difficulty that the Councils have is if the 1990 Act is amended (as proposed by the Councils) to allow corporate bodies to apply for street trading licences. Corporate bodies who are temporary traders are more likely to apply for a street trading licence than an individuals who are temporary traders, because they can employ UK residents to man a stall, whereas an individual temporary trader would have to continually enter and leave the UK to maintain his temporary status. A corporate body might find it economically acceptable not to avail itself fully of a street trading licence. For example, it could decide only to trade on certain busy days.

This illustrates, in the Councils view an inherent unfairness in the Directive. BIS is right to say that the Council might feel that it would be difficult to treat permanent and temporary traders differently in this way, but this is an inherent defect in the Directive which allows for (and in fact actively promotes) such discrimination to take place.

**Question 12:** Do you foresee any problems with our proposals –

(i) To disapply regulation 19(5) of the Provision of Services Regulations where a mandatory ground for refusal of the application exists (regulation 19(5) provides that where a licence application is not processed within the period required by regulation 19, it is deemed to be granted); or

(ii) To leave it to local authorities to decide whether to put arrangements in place to disapply the regulation in other circumstances, or to specify what conditions will automatically attach to a licence which is deemed to have been granted under regulation 19(5)? Please give reasons for your views (see paragraphs 1.51 – 1.53)

The Councils take the view that a combination of (a) disapplication of regulation 19(5) in mandatory ground cases and (b) discretion to disapply it in other circumstances and (c) discretion to impose conditions on licences that are deemed to be granted would be the best solution. This would provide certainty in mandatory refusal cases along with the ability to deal with different cases as they arise. The ability to specify conditions is essential. **Note: In regard to the imposition of conditions where a licence is deemed to be granted, the Councils have not provided any drafting in their amendments. The Councils would welcome the opportunity to see BIS's drafting, and adopt it if appropriate.**

**Question 13:** Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate? (see paragraphs 1.54 -1.57)



Paragraph 7(7) prohibits holders of street trading consents from using vehicles or stalls etc unless they have permission.

N/A: There is no equivalent to paragraph 7(7) in the 1990 Act.

**Question 14:** Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (See paragraph 1.59 above) Paragraph 1 10(1)(d) is related only to paragraph 7.7 (see question 13).

N/A: There is no equivalent to paragraph 7(7) (on which this proposal hangs) in the 1990 Act.

**Question 15:** Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

Before the 1990 Act, street trading was regulated in the former Metropolitan London Boroughs by the London County Council (General Powers) Act 1947. The 1947 Act was supplemented by Part VII of the London County Council (General Powers) Act 1957. The 1957 Act is not mentioned in Annex B.

In those areas of what is now Greater London that were not former Metropolitan Boroughs, there were a number of local Acts which governed street trading. They are all set out in on in **Appendix B** to this response. All those Acts were subject to repeal under section 40 of the 1990 Act. The effect of section 40 was that if a Council adopted the street trading provisions of the 1990 Act by passing a resolution, then the relevant pre-existing enactment would cease to apply in their area.

**London Councils have not yet heard from all of the 31 Councils as to whether they have adopted Part III of the 1990 Act. If (as is suspected) they have, then all the Acts mentioned will have been repealed so far as they apply in the areas of the 31 Councils.**

**Question 15.1:** Please can local authorities tell us-

(i) whether having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation;

Yes they do, and the suggested amendments are attached as **Appendix A**.

(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.

Yes, the Councils would like amendments/repeals of the 1990 Act to be contained in the regulations.

**Question 16:** Please can local authorities tell us-

(i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);

Rather than set them out in the body of this response, the amendments themselves are contained in **Appendix A**.

(ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);

There are no other local Acts that are relevant to the Councils as far as London Councils is aware.

(iii) if any of the provisions listed in Annex C are no longer in force.

So far as London Councils are aware, the street trading provisions of the 1990 Act have been adopted by the 31 London Boroughs who can adopt them, and of that is the case, then those provisions listed in Annex C to the consultation and which are also in **Appendix B** to this note are no longer in force as regards those 31 London Boroughs. However, London Councils must add a note of caution – not all the 31 councils have responded to the question of whether they have adopted the provisions of the 1990 Act. Also, London Councils cannot say whether the provisions remain in force in relation to other areas to which they may have applied (for example areas outside modern greater London – if any, and the Cities of Westminster and London).

**Question 17:** Can local authorities tell us-

(i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?

N/A

(ii) whether (and, if so, what) consequential amendments are required to any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Again, rather than set them out, any necessary amendments have been included in Appendix A.

## **Appendix A - The Proposed London Provisions to be inserted into the Regulations**

### **Part [\*]**

#### **Amendments to London Local Authorities Act 1990**

##### **Amendments to the London Local Authorities Act 1990**

1. The London Local Authorities Act 1990 **(a)** is amended as specified in regulations 2 to 11.

2.—(1) For section 21(2)(a) substitute—

“(a) trading as a pedlar;”.

(2) After section 21 insert—

##### **“Pedlars**

21A.—(1) The reference to trading as a pedlar in subsection (2)(a) of section 21 (interpretation of Part III) of this Act is a reference to trading in accordance with—

- (a) subsection (2) below (in relation to all cases);
- (b) subsection (4) below (in relation to trading in a designated area);
- (c) subsections (5) and (6) below (in relation to trading other than in a designated area).

(2) Trading is in accordance with this subsection if—

- (a) the trading is only on foot; and
- (b) each article which the person is selling or exposing or offering for sale, and each article used or intended to be used for any purpose connected with the trading is carried in either or both of the following ways—
  - (i) on the trader’s person, without any other means of support; or
  - (ii) in or on a receptacle which is pushed or pulled only by the person and in relation to which the condition specified in subsection (7) is fulfilled and, if applicable, the condition specified in subsection (8) is fulfilled.
- (c) the person trades only in articles which he brought only on foot from the place where the articles were kept overnight to the place where he first trades on the day in question.

---

(a) c.vii.

- (3) For the purposes of subsection (2)(c) above, if the articles were kept overnight outside mainland England, Wales or Scotland, and were brought to the mainland by ship, boat or other similar vessel or by aircraft, the requirement to bring the articles only on foot shall be read as a requirement to bring the articles on foot from the place where the person disembarked from the ship, boat or other similar vessel or aircraft.
- (4) Trading is in accordance with this subsection if the person trades only by means of visits from house to house.
- (5) Trading is in accordance with this subsection—
  - (a) if the person trades only by means of visits from house to house; or
  - (b) if the person trades other than by means of visits from house to house, the person trades in accordance with subsection (6).
- (6) Trading is in accordance with this subsection if—
  - (a) the person trades in articles other than refreshments or tickets; and
  - (b) subject to subsection (11) below, the trader leaves any location that he is occupying with a view to trading no later than 10 minutes after he arrives there (taking any articles or receptacles of the kind mentioned in subsection (2)(b) above with him); and
  - (c) the trader does not occupy a location with a view to trading if, with a view to trading, he has during the previous 3 hours occupied—
    - (i) that location; or
    - (ii) a location within 50 metres of that location.
- (7) The condition of this subsection is that the receptacle (excluding its handle and any display of articles on the receptacle) does not at any point exceed—
  - (a) a width of 0.75 metres;
  - (b) a depth (front to back) of 0.5 metres;
  - (c) a height of 1.25 metres.
- (8) The condition of this subsection is that if articles are displayed on the receptacle, the receptacle (including its handle) and the display together must not at any point exceed—
  - (a) a width of 0.88 metres;
  - (b) a depth (front to back) of 0.83 metres;

- (c) a height of 1.63 metres.
- (9) Dimensions for the purposes of subsections (7) and (8) are those measured in a horizontal plane (for width and depth) and a vertical plane (for height) when the receptacle is in its intended resting position.
- (10) In subsections (7) to (9) “display” includes, as well as the articles displayed, any stand, board, structure or other thing attached to the trolley and used to display the articles.
- (11) Subsection (6)(b) above does not prevent a trader from remaining in a location for longer than 10 minutes after his arrival there if—
  - (a) he does so in consequence of a genuine customer (or more than one genuine customer) having approached him with a view to completing a transaction; and
  - (b) he leaves the location as soon as that transaction is (or those transactions are) completed (or aborted).
- (12) For the purpose of subsection (6)(d) above, distance is to be measured in a straight line except to the extent that—
  - (a) the ground is not level; or
  - (b) passage along the line is obstructed by buildings, fixed structures or private property.
- (13) A borough council may designate an area for the purposes of this section in accordance with the provisions of subsections (14) to (17) below and may subsequently rescind or vary any such designation.
- (14) A borough council may designate an area for the purposes of this section or vary such a resolution so as to increase a designated area only if it has reason to believe that it is necessary to do so for one or more of the following reasons—
  - (a) safeguarding public safety or security;
  - (b) safeguarding public health;
  - (c) protecting the environment (including the urban environment), which includes protecting the amenity of the area, including the setting of listed buildings or the character or appearance of conservation areas;
  - (d) ensuring road safety;
  - (e) preventing the obstruction of the highway or ensuring that no undue interference or inconvenience or safety hazard is caused to people using the street.

- (15) A designation for the purposes of this section shall have effect at all times or during such periods as may be specified in the designation.
- (16) Subject to subsection (17), paragraph (a) of the proviso in subsection (1) of section 24 (designation of licence streets) of this Act and the provisions of subsections (3) to (11) of that section shall apply to a designation under this section as they apply to a designating resolution but as if in subsection (5)(b) the words “as a licence street” were omitted.
- (17) In the case of a proposed designation where the designation would have effect for a continuous period of no more than seven days—
  - (a) paragraph (a) of the proviso in subsection (1) of the said section 24 and subsections (3), (4) and (7) to (11) of that section shall not have effect as mentioned in subsection (16) above;
  - (b) the designation shall take effect on the day specified in the designation.
- (18) The council shall publish information on its website relating to the designation, including the geographical extent of the designation and the period during which it is to have effect.
- (19) In this section a “designated area” means an area of a borough designated for the purposes of this section by a designation of a council under subsection (13) above.”.

### **Designation of licence streets**

3. In section 24, after subsection (1) insert—

“(1A) A designating resolution may provide that the designation is to take effect in relation to-

- (a) all persons; or
- (b) all persons other than a person who is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009<sup>(b)</sup> (providers of services provided in UK from another EEA state).”.

### **Street trading licences and photographs**

4.—(1) Section 25 is amended as follows—

- (a) in subsection (2)(b), leave out “for a licence to carry on ice cream trading”;
- (b) for subsection (3) substitute—

---

(b) S.I. 2009/2999

“(3) In the case of an application by an individual, the applicant shall comply with any requirement by the council to submit with his application—

(a) one photograph of himself, in the case of an application made by electronic means;

(b) up to three photographs of himself, in any other case.”

(3) In section 27(1)(c), for “one of the photographs” substitute “a photograph”.

#### **Mandatory grounds of refusal**

5.—(1) Section 25(4) is amended as follows.

(2) For paragraph (a)(i) substitute—

“(i) if, were the licence to be granted and the applicant to engage in the trading specified by the licence, the applicant or any other person would contravene any provision of Part 2 of the Children and Young Persons Act 1933(c) (employment) or of any byelaw made under any such provision or;”.

(3) In paragraph (a)(ii) for “ice cream trading” substitute “street trading”.

(4) Omit paragraph (a)(iii).

#### **Street trading licences: disapplication of regulation 19(5) of the Provision of Services Regulations 2009 in certain cases**

6.—(1) In section 25, after subsection (4) insert—

“(4A) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant of a street trading licence which the borough council would have refused under subsection (4) above, had they processed the application within the period set or extended in accordance with regulation 19 of those regulations.”.

(2) In section 31, after subsection (1C) insert—

“(1CA) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant of a temporary licence which the council would have refused under subsection (1C) above, had they processed the application within the period set or extended in accordance with regulation 19 of those regulations.”.

#### **Discretionary grounds of refusal**

---

(c) 1933 c.12.

7.—(1) Section 25 is amended as follows.

(2) In subsection (6)(c)—

- (a) omit “is an individual who”;
- (b) for “personally to avail himself” substitute “to avail himself or itself”.

(3) For subsection (6)(f) and (g) substitute—

- “(f) that the council, for an overriding reason in the public interest within the meaning of Article 4 of Directive 2006/123/EC on services in the internal market, require applicants to be individuals and the applicant is not an individual;
- (g) that the street is otherwise unsuitable for the trading in which the applicant desires to engage.”.

(4) After subsection (6) insert—

- “(6A) An application shall not be refused on the ground mentioned in subsection (6)(a) above unless there is also an overriding reason in the public interest for refusing the application within the meaning of Article 4 of Directive 2006/123/EC on services in the internal market.
- (6B) An application shall not be refused on the ground mentioned in subsection (6)(c) or (e) above if the applicant is a provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in UK from another EEA state).”.

(5) In subsection (7), for “subsection (6)(a)” substitute “subsection (6)(c)”.

### **Succession**

8.—(1) Section 26 is repealed.

(2) In section 25(2), omit the words after paragraph (e).

### **Conditions of licence**

9.—(1) Section 27 is amended as follows.

(2) For subsection (1)(a) substitute—

- “(a) unless it lapses or is revoked or surrendered, remain valid for such period as is specified in the licence or, if no period is specified in the licence, indefinitely;”.

(3) For “ice cream trading” in both places where those words appear, substitute “street trading”.



## **Offences**

10. In section 34(4) for “ice cream trading” substitute “street trading”.

## **Repeals**

11. The following provisions of Schedule 4 to the London Local Authorities Act 2004<sup>(d)</sup> are repealed—

- (a) sub-paragraph 2(a);
- (b) paragraph 4, so far as it substitutes subsection 25(3) of the London Local Authorities 1990 Act.

---

(d) c.vii.

## Appendix B – Pre-1990 Street trading Local Enactments in London

Chapter	Enactment	Provision
21 & 22 Geo. 5. c. lx.	West Ham Corporation Act 1931.	Part IV.
21 & 22 Geo. 5. c. xcv.	Dagenham Urban District Council Act 1931.	Part VI.
23 & 24 Geo. 5. c. lxxvii.	Wimbledon Corporation Act 1933.	Part VIII.
23 & 24 Geo. 5. c. lxxviii.	Barking Corporation Act 1933.	Part IX.
26 Geo. 5 & 1 Edw. 8. c. cxv. 1	Merton and Morden Urban District Council Act 1936.	Part VI.
Edw. 8 & 1 Geo. 6. c. xcvi.	Coulsdon and Purley Urban District Council Act 1937.	Part VI
7 & 8 Geo. 6. c. xxi.	Middlesex County Council Act 1944.	Part IX.
10 & 11 Geo. 6. c. xlv.	London County Council (General Powers) Act 1947.	Part IV.
4 & 5 Eliz. 2. c. lxxxiv.	Walthamstow Corporation Act 1956.	Part V.
4 & 5 Eliz. 2. c. xc.	Middlesex County Council Act 1956.	Part V. .
5 & 6 Eliz. 2. c. xxxv.	London County Council (General Powers) Act 1957.	Part VII.
6 & 7 Eliz. 2. c. xxi.	London County Council (General Powers) Act 1958.	Section 37.
8 & 9 Eliz. 2. c. xl.	Croydon Corporation Act 1960.	Part XII.
10 & 11 Eliz. 2. c. xlv.	London County Council (General Powers) Act 1962.	Sections 33 and 34.
1974 c. xxiv.	Greater London Council (General Powers) Act 1974.	Sections 17 to 19.
1978 c. xiii.	Greater London Council (General Powers) Act 1978.	Section 10 and Schedules 11 and 2.

Chapter	Enactment	Provision
1978 c. xvi.	Greater London Council (General Powers) (No. 2) Act 1978.	Section 10 and Part II of Schedule 1. 1
1981 c. xvii.	Greater London Council (General Powers) Act 1981.	Section 17 and Schedule 1.
1982 c. i.	Greater London Council (General Powers) Act 1982.	Section 6 and Schedule 1